

EXHIBIT 7

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.
Nos. 071882-83
073128

Superior Court
Volterra, J

COMMONWEALTH OF MASSACHUSETTS

vs.

SHAWN DRUMGOLD and TERRANCE TAYLOR

APPEARANCES:

Philip T. Beauchesne, Esq., Assistant District
Attorney, on behalf of the Commonwealth.

Steven J. Rappaport, Esq., on behalf of the Defendant
Shawn Drumgold.

Robert George, Esq., on behalf of the Defendant,
Terrance Taylor.

Suffolk Superior Courthouse
Boston, Massachusetts
Thursday, March 2, 1989

MOTION TO DISMISS

VOLUME I

Pages 1 to 143

ANN M. DONNELLY
OFFICIAL COURT REPORTER

I-2

I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Gordon A. Martin, Jr.	4	15		
Leslie E. Harris	24	31		
Leslie Walker	38	45		
Richard Walsh	50	88	96	
Paul Hadley	102	107		
Paul J. Murphy	110	113		
Shawn Drumgold	121	132		

E X H I B I T S

<u>No.</u>		<u>In Evidence</u>
1	District Court tapes (3)	14
2	Incident report	65
3	Advice of rights form	68
4	Transcript of tape recorded statement by Defendant	72
5	Booking sheet	83
6	Incident report and booking sheet (8/28/88)	89
7	Affidavit and search warrant	102

(Chalk 1 - diagram -- page 33)

I-4

1 Hadley, an attorney who was the bar advocate on August 29th,
2 1988, in the Roxbury Municipal Court.

3 And it's my understanding as well that Mr.
4 Beauchesne has a number of police witnesses as well.

5 Without further ado, if I may, your Honor,
6 I'll call Justice Gordon Martin.

7 GORDON MARTIN, Sworn

8 Direct Examination

9 BY MR. RAPPAPORT:

10 Q Will you state your name for the record, please,
11 sir?

12 A Gordon A. Martin, Jr.

13 Q And you are employed, sir, as?

14 A I'm a District Court Judge, based in Roxbury,
15 Massachusetts.

16 Q Judge Martin, directing your attention to August 29,
17 1988, do you recall whether you were sitting in
18 Roxbury District Court on that date?

19 A I was.

20 Q And during the course of that day, sir, did a
21 particular Defendant, one Shawn Drumgold -- was his
22 case brought to your attention?

23 A Two cases were brought to my attention.

24 Q You say two cases involving Mr. Drumgold?

25 A Yes.

I-7

1 you -- either did you assign counsel, or did you
2 learn that counsel had been assigned to represent
3 Mr. Drumgold on the murder case?

4 A Yes. I think I made the designation of Mr. Hadley.
5 Occassionally a Clerk will do that, but I'm pretty
6 sure that morning that I picked Mr. Hadley.

7 Q That was for the drug case?

8 A Yes.

9 Q And you learned, prior to having discussions with
10 any senior members of the Boston Police Department
11 that counsel had been assigned by the Committee
12 for Public Counsel Services to represent Mr.
13 Drumgold on the murder case?

14 A I'm not sure that I learned that counsel had been
15 assigned, but I was advised that a murder complaint
16 was going to be sought against Mr. Drumgold; and I
17 requested that the Committee for Public Counsel
18 be contacted, so that counsel would be assigned,
19 specifically, for the murder charge.

20 Q And at a certain point, sir, did you in fact have
21 discussions with a senior member of the Boston
22 Police Department?

23 A Two -- two senior members.

24 Q Do you know who they were, sir?

25 A One was Deputy Superintendent William Celester. The

I-8

1 other -- I was advised of his name at the time, I
2 think. I don't recall it at this point. I believe
3 it was a detective.

4 Q Now, sir, would the names Detective Walsh or Detective
5 Murphy -- do you know if it was either of those
6 people?

7 A I do not personally know that for sure.

8 Q Have you seen that detective that day?

9 A I may well have. I see detectives every day.

10 Q At a certain point, sir, you did have a discussion,
11 did you not, with Mr. Celester at the sidebar?

12 A And with the detective.

13 Q And with that other detective as well?

14 A Yes.

15 Q And do you recall what the content of that conversation
16 was, sir?

17 A They advised me that they wished to remove Mr.
18 Drumgold from the building, and delay his arraignment
19 until the following court day. I raised question as to
20 why that was necessary, since it was my understanding
21 that he had already been to ID; and my belief was that
22 proper ID procedures were taken with persons accused of
23 a drug offense. I was advised, I believe primarily
24 by Deputy Superintendent Celester, that inadequate ID
25 occurred, that there was a need in his, or their,

I-9

1 judgment for additional fingerprinting and photograph-
2 ing of Mr. Drumgold.

3 Q Did the issue of interrogation of Mr. Drumgold ever
4 come up during the course of the discussions with Mr.
5 Celester and this other detective?

6 A Yes.

7 Q And specifically what was said with regard to
8 interrogation of Mr. Drumgold?

9 A I told them that I was permitting him to leave the
10 building for a specific, limited amount of time,
11 solely for the purposes of the additional identifica-
12 tion procedures, the photographing and the fingerprint-
13 ing that I had been advised was necessary.

14 I told them that it was not, in my judgment, adequate
15 for him to be returned the next day; that it seemed
16 to me that everything that was being sought could be
17 completed in three to three and a half hours. And my
18 belief is that we set 3:30 as the deadline by which Mr.
19 Drumgold would be returned to our courthouse.

20 Q Sir, at----

21 THE COURT: Do you have a memory as to
22 when this conversation at the sidebar took place?

23 THE WITNESS: My memory, Judge Volterra,
24 is based on the three-and-a-half to three-hour period;
25 and thus I believe it was about noontime.

I-20

1 Q And in response to that did you take any action?

2 A That was when I asked that either the Committee
3 for Public Counsel be advised, or whether they had
4 in fact already been advised. I did one or the
5 other.

6 Q Who did you direct that order to?

7 A To either Mr. Silva or Mr. Freeman, or both.

8 Q It was not to a representative of the Committee for
9 Public Counsel; it was one of your clerks?

10 A Yes.

11 Q And when you had the conversation with Deputy
12 Celester, who else, if anybody, was present at that
13 sidebar conference?

14 A There was a detective with him. I don't recall
15 whether Mr. Silva moved over. I don't think he did.
16 Whether he could hear what we were saying, I don't
17 know.

18 Q Would you recognize the officer if you saw him?

19 A I'm not sure.

20 MR. BEAUCHESNE: Officer Murphy, would you
21 stand up, sir?

22 (Officer Murphy stood.)

23 BY MR. BEAUCHESNE:

24 Q Is that the officer that was at sidebar that morning,
25 your Honor?

I-21

1 A It may well have been. I can't make a positive
2 identification.

3 Q You just don't know.

4 A I'm not sure.

5 Q All right.

6 It could have been?

7 A Yes.

8 Q Was there anybody else, other than you and Celester,
9 and this officer, at that conference?

10 A Well, as I said, I can't recall specifically, since
11 my back was to him at that point, at least partially,
12 whether my Clerk, Joe Silva, moved over or not.

13 Q But excluding Joe Silva, any other person?

14 A I don't think so. No.

15 Q Who raised the interrogation, sir?

16 A I think I did. Yes.

17 Q Sua sponte, so called?

18 A Yes, as part of the conversation as to why they wanted
19 to remove him.

20 Q And do you recall -- can you give us your best memory,
21 in verbatim form, the conversation as you now recall
22 it?

23 A They came up to the left; and I noticed them there,
24 and moved over. I know Deputy Celester by sight.
25 I don't remember the order of the conversation, and I

I-22

1 can't really give a verbatim account, except as to
2 the elements that -- my expression of surprise that
3 additional identification was needed, if someone had
4 in fact already been through ID; the assurance I
5 got, primarily from Deputy Celester, that in a
6 murder case, such as the one that was being
7 investigated here, much more would be done for iden-
8 tification purposes; specifically: more photographs,
9 different types of photographs, more fingerprinting
10 than was one on the ordinary case involving someone
11 accused of selling or possessing illegal drugs with
12 the intent to sell. That was the explanation as to
13 why they wanted to remove him.

14 I believe that I stated, before they left, no
15 interrogation, and that there was a clear agreement
16 that he was being removed solely for the purpose of
17 this additional identification.

18 Q At that particular time had you been advised of any
19 particular counsel that was to be appointed by the
20 Committee for Public Counsel Services?

21 A I'm not sure, but I don't think so.

22 Q And at that time you had not appointed anybody to
23 represent him on the murder charge?

24 A No. No, I'd appointed Paul Hadley for the drug case.

25 Q Had Hadley been appointed prior to your agreeing to

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Suffolk Superior Courthouse
Boston, Massachusetts
Tuesday, March 7, 1989

MOTION TO DISMISS

VOLUME III

Pages 1-191

ANN M. DONNELLY
OFFICIAL COURT REPORTER

1

2

2

I N D E X

3

Witnesses:DirectCrossRedirectRecross

4

Denise Simonini Hall

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Terrance Taylor

48

53

59

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Richard Walsh

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93

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E X H I B I T S

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No.In
Evid.For
Iden.

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11 CPCS appointment form

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Motion Challenging Integrity of Grand Jury Process

13

No. 1 Statements of witnesses Page 21

14

A for ID. News articles Page 35

15

B for ID. Supplemental news articles Page 35

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487

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127

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2 pattern that's as close to this fact pattern as I could
3 possibly get. In Estelle vs. Smith the Defendant was in
4 custody, as this Defendant was. He had been indicted
5 in that case. In this case this Defendant had been
6 complained against. And he had counsel appointed for him,
7 as in this case. Certainly at the time of the afternoon
8 statement, counsel----

9 (Discussion off the record.)

10 MR. RAPPAPORT: As I say, Judge, Estelle
11 vs. Smith is a Supreme Court case, where the Defendant wa
12 in custody, had counsel appointed to represent him, and
13 he had been indicted, as opposed to complained against.
14 In that particular case the fact pattern-- the Court
15 doesn't say whether or not a plea had been entered by the
16 Defendant. But the case arises out of the appointment of
17 a psychiatrist to examine the Defendant as to his compe-
18 tency at that particular time.

19 So perhaps the Court didn't actually take
20 a plea in that particular case -- Estelle vs. Smith.
21 The Sixth Amendment right to counsel had attached at that
22 particular time.

23 There's no question that in this case,
24 on the murder charge, that there had not been an actual
25 plea of guilty or not guilty. However, if you take a look

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2 at the record, Judge -- and the record consists of the
3 tapes, as well -- I ask the Court to take a look at what
4 Mr. Beauchesne provided the Court by way of a chalk.

5 Judge, when Mr. Hadley was testifying,
6 it was his memory that he was appointed to represent Mr.
7 Drumgold, and that Mr. Drumgold was arraigned in the
8 morning; and the bail hearing was put over for some other
9 time. This was certainly on the first charge, on the
10 drug charge.

11 It was Judge Martin's memory that the
12 arraignment -- when he testified here that the arraignment
13 hadn't taken place -- Judge, what I'm going to ask the
14 Court to do is take a look at, first, page 6 of the
15 chalk that Mr. Beauchesne supplied to the Court. And
16 you'll see that they being with the murder complaint.

17 And it says: Shawn Drumgold, arraignment.
18 They begin with the murder complaint, and a not guilty --
19 a plea of not guilty is entered by the Court on behalf of
20 Mr. Drumgold. That's at page 6, on the murder charge.

21 Then they go into the question of the
22 bail. And after going into the question of bail, at
23 page 11, Judge, at the bottom, I state to the Court:

24 "Yes, your Honor. I should state that at
25 approximately 11:00 o'clock this morning

129

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2 I received a call from the Committee for
3 Public Counsel Services, asking if I would
4 be willing to represent Mr. Drumgold."

5 On to page 12, the Judge then responds:
6 "And that was following the Court having
7 been advised that a murder complaint was
8 being sought today by the Commonwealth
9 against Mr. Drumgold, who had been pre-
10 viously arraigned on drug charges, to
11 which Mr. Hadley was appointed to represent
12 him."

13 Judge, if you then go on to page -- I
14 guess it's page 19. It's after page 18 in what I have
15 here, and it's an unmarked page. It then says again:
16 Arraignment of Shawn Drumgold. And you'll see there that
17 the Clerk says that on Shawn Drumgold, that complaint
18 number, the possession of Class A with intent to distrib-
19 ute: Is the Commonwealth asking for bail on that
20 complaint?

21 There's never any plea entered or asked
22 for in that particular instance. And I ask the Court to
23 make a finding of fact, based upon what Mr. Hadley
24 testified to, and based upon what the record appears to
25 indicate, that at least for purposes for the Court's

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2 rulings of law at a later point, that Mr. Drumgold had in
3 fact been arraigned early on the morning of August 29th,
4 when Mr. Hadley was appointed to represent him on that
5 drug case. So that he had been arraigned, at least on
6 that case, with counsel appointed. And I ask the Court
7 to make that finding of fact.

8 I also ask the Court to consider, if it
9 will, the testimony by Mr. O'Meara. Mr. O'Meara testified
10 that early on that morning he received a call from the
11 Roxbury Municipal Court that Mr. Drumgold was in custody.
12 He spoke to either Walsh, or both; and he told them at
13 that point, before they'd ever spoken to Mr. Drumgold, he
14 told them at that point what he wanted them to do.

15 What Mr. O'Meara very forthrightly said
16 was: I want the full booking procedure, which included
17 pictures, prints, and have him Mirandized and ask him
18 whether or not he wants to give you a statement. Mr.
19 O'Meara directed these two detectives very early in the
20 morning that: Look, if we can get a statement from this
21 guy, let's get a statement from this guy.

22 Well, Judge, that's not the way the
23 testimony comes out from Mr. Walsh and Mr. Murphy.
24 According to Judge Martin he says that a detective, who
25 we now know is Murphy, in the presence of Celester,

131

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2 came to him at the sidebar, saying: We want Mr. Drumgold.
3 What do you want him for? Judge, we have identification
4 procedures that we have to take care of. We need
5 pictures. We need prints.

6 Now, Judge, at this stage of the game
7 there's absolutely nothing that they would have to match
8 his prints up against. At this stage of the game, even in
9 March, there's nothing to match his prints up against.
10 At this stage of the game, in March, there's no identifica-
11 tion been made by anybody other than people that already
12 knew Mr. Drumgold.

13 This was a ruse, Judge. This was a ruse
14 by these two detectives to get Mr. Drumgold out of that
15 courthouse, so that they could get a statement from him.
16 Judge, there was clearly no indication to Judge Martin
17 by any officers-- and Mr. Murphy was present, he's Walsh's
18 partner -- that there had already been some sort of interr-
19 ogation earlier that day. They made the representation
20 that all they wanted him for was prints and photos, ID
21 purposes.

22 Now, Judge Martin seems to recall bringing
23 up the question of interrogation, and having had it repre-
24 sented to him very clearly that there would be no interro-
25 gation of this particular Defendant. Now, I submit to the

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2 Court that Judge Martin would seem to have absolutely no
3 reason to fabricate his testimony. Certainly if there are
4 problems with memory, that's understandable, because,
5 after all, judges, lawyers, police officers -- we're all
6 human beings, and there are certain frailties of human
7 nature. And one of them is that memory fades after a
8 period of time.

9 But I submit to the Court that you might
10 be able to say: Well, maybe it never came up between
11 Judge Martin and Celester, and this detective, who we now
12 know as Murphy, if it wasn't for Celester himself.
13 Celester came into this courtroom and said: Well, there
14 was a preliminary discussion about booking, and when we
15 could get him back here. And I really didn't know what we
16 needed for booking, and we had to bring him someplace
17 else, although the testimony is clearly that he was brought
18 to Area B first, despite the fact that they didn't have
19 the ability to do the ID procedures at Area B. He was
20 still brought to Area B.

21 So, what happens? Celester knows that
22 a senior police official was requested in the courtroom
23 by Judge Martin. Judge Martin wanted certain representa-
24 tions. And Celester says at a certain point Judge Martin
25 does 'call him back to the bench and says: Look, you're not

133

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2 going to question this guy, are you? And Celester's
3 response is: No, I'm not.

4 Judge, once again, a deception -- an
5 intentional deception of the Court, a ruse to get
6 possession of this man's body so that they can do what
7 they will with him at thatpoint. Judge Mr. Celester is
8 the commander of Area B, and as the Court well knows he
9 has overall supervision of the police officers operating
10 within his section.

11 After being told by the Court in no
12 uncertain terms that you're not to question this man,
13 Mr. Celester did not even bother to tell the detectives,
14 who hadn't even taken Mr. Drumgold from the courtroom
15 yet -- and as you listen to the tape you know that Mr.
16 Drumgold wasn't taken immediately from the courthouse,
17 because he was then given a period of time to confer with
18 Mr. Hadley before he was taken from the courthouse -- that
19 Mr. Celester never communicated this to his brother
20 officers.

21 If you want to believe that Murphy didn't
22 hear it in the first place, Mr. Harris -- who was an
23 attorney working for the Roxbury Defenders Committee --
24 was sitting in the courtroom some 12 feet away. He heard
25 what the Judge had to say.

487

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2 Mr. Hadley was up at the bench, your
3 Honor, with the police officers and the judge; and he
4 heard what the judge had to say. He remembers the judge
5 shaking his finger, or Harris -- they remember the judge
6 shaking his finger: Look, you're not to interrogate this
7 guy. I'm only giving him up for ID purposes.

8 Judge, number one, the representation that
9 it was only for ID purposes was a misrepresentation, based
10 upon what Mr. O'Meara says. Mr. O'Meara said: Look, if
11 you can get a statement from this guy, get the statement.

12 THE COURT: Assuming that everything you
13 say is true, and without in any way denigrating from the
14 ability of Judge Gordon Martin, I ask a rhetorical
15 question.

16 What business did -- two rhetorical
17 questions. What business did Judge Martin have in
18 permitting Drumgold to go? One. Two: If he did, does
19 that free up the police to do whatever they want?

20 MR. RAPPAPORT: No. This is the unique
21 nature of the situation. You're talking about actions by
22 representatives of the Commonwealth. Whether you're talk-
23 ing about the police, or you're talking about the Judge,
24 you're still talking about the Commonwealth. The Judge,
25 as an agent of the Commonwealth, gives the Defendant up to